

**Agenda Item: 11-4**

**Meeting Dates: August 11 and 12, 2004**

## **DIRECTOR'S REPORT**

---

### **Budget**

The Budget Bill is likely to be taken up by the Legislature for a vote on July 28, 2004. Consistent with the Governor's proposal, the Budget Bill would provide the Authority with a General Fund budget of \$8.3 million. This represents a \$2.7 million General Fund reduction. The Budget would also provide over \$23 million in Proposition 50 bond funds for CALFED programs administered directly by the Authority (Ecosystem Restoration and Science). Overall, the Authority and CALFED implementing agencies will have a budget of approximately \$650 million including State, bond, and all other funds.

The proposed Resources budget trailer bill would include language related to Proposition 50 expenditures and supplemental report language related to the Science Program. Agreement was not reached on trailer bill language related to user fees and CALFED financing.

The Budget passed by the Budget Conference Committee includes the following trailer bill language and supplemental report language:

### **CALFED Grant Programs Consistency With The Record Of Decision**

Section 79509.6 is added to the Water Code to read:

(a) For the purposes of ensuring compliance with Section 79509, the California Bay-Delta Authority shall review regulations, guidelines, or criteria that are proposed by an implementing agency to carry out a grant program for projects and activities that meet the following criteria:

(1) The project is located within the CALFED solution area as defined in the CALFED Final Programmatic Environmental Impact Statement / Environmental Impact Report dated July 2000.

(2) The project wholly or partially assists in the fulfillment of one or more of the goals of the CALFED Bay-Delta Program.

(b) Except for projects financed pursuant to Chapter 6 (commencing with Section 79545) or Chapter 10 (commencing with Section 79570), The California Bay-Delta Authority may review, and comment to the appropriate implementing agency with regard to, a proposal to award a grant pursuant to this division on behalf of a project that meets the criteria set forth in subdivision (a) for the purposes of determining whether or not the project is consistent with the CALFED Programmatic Record of Decision.

(c) To avoid any delays in project awards, the opportunity for review by the California Bay-Delta Authority pursuant to subdivision (b) shall be incorporated into the grant program schedules established by the implementing agencies.

(d) For the purposes of this section, "implementing agency" has the same definition as that set forth in subdivision (h) of Section 79402.

### **CALFED Science Program Report**

#### **3870-001-0001—California Bay-Delta Authority- The CALFED Science Program.**

(a) The science program (implemented by the California Bay-Delta Authority) shall, by January 10, 2005, report to the Legislature with a plan to develop and implement a research agenda designed to answer the following questions:

(i) How much water is necessary for the full recovery of all delta dependent fish species designated on either the state or federal endangered species lists as either endangered or threatened? To what extent, if at all, is this amount of water in addition to that which is provided under the current regulatory regime?

(ii) What time of year is the additional water identified in (i) needed?

(iii) Are there other characteristics of the additional water identified in (i), such as temperature, that are critical to recovery of these species, and if so what are those characteristics?

(b) As part of the research agenda described in (a), the science program may address any other questions related to the water needs of threatened or endangered fish that the science program deems appropriate.

### **Legislation**

SB 1155 was amended on June 29, 2004 and is currently in the Assembly Appropriations Committee scheduled to be considered on August 4, 2004. As amended, the bill would require the Director of DWR in collaboration with the Secretary of the Interior to develop a plan to meet the existing permit and license conditions for which the department has an obligation by January 1, 2006. The bill would require the plan to be developed and filed with the State Water Resources Control Board and the California Bay-Delta Authority prior to increasing the existing permitted diversion rate at Banks Pumping Plant.

Federal Authorization – House and Senate committee staff continue to work together to resolve the differences between H.R. 2828 (Calvert) and S. 1097 (Feinstein). S. 1097 was passed out of Committee earlier this year, and awaits action by the Senate. On July 9, 2004, H.R. 2828 was passed on voice vote. The bill authorizes \$389 million over four years to help implement the CALFED Bay-Delta Program and provides for federal agency participation in the California Bay-Delta Authority.

## **CALFED Litigation Update**

### **A. Programmatic Litigation**

#### **1. Federal case**

***Laub v. Babbitt, et al.***, U.S. District Court, Fresno

Plaintiffs: The California Farm Bureau Federation and several individual farmers.

Defendants: All Federal and State agencies participating in the CALFED Program. The State agencies recently named in the Farm Bureau's latest complaint are sued via their executive officers: Governor Schwarzenegger; Michael Chrisman, The Resources Agency (Resources); Terry Tamminen, Environmental Protection Agency (CalEPA); Celeste Cantu, State Water Resources Control Board (SWRCB); Lester Snow, Department of Water Resources (DWR); Loris "Ryan" Broddrick, Department of Fish and Game (DFG); Peter Rabbon, The Reclamation Board; Margit Aramburu, Delta Protection Commission; Darryl Young, Department of Conservation; Will Travis, Bay Conservation and Development Commission; Sandra Shewry, Department of Health Services (DHS); and A.G. Kawamura, Department of Food and Agriculture (CDFA).

Summary of Case: The Farm Bureau filed this case in September 2000. It alleges that the CALFED Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR) violates National Environmental Policy Act (NEPA) and the Administrative Procedures Act. It seeks an injunction against all State and Federal actions to implement the Record of Decision (ROD) until an adequate Programmatic EIS/EIR is prepared. The State defendants are apparently being sued under the theory that the Program is a joint Federal-State partnership that requires NEPA compliance under Federal law; and, therefore, the Federal government must comply with NEPA for all State projects, as well as Federal projects.

Current Status: The case is pending in the Federal district court. The district court dismissed an earlier version of the complaint as premature in August 2001. The Court of Appeals reversed that decision in September 2003. The Farm Bureau recently amended its complaint and the State defendants filed an answer on February 2, 2004. A status conference was held on January 20, 2004. The Federal agencies were given until August 27, 2004 to file the administrative record and all discovery was stayed until that date. Another status conference was set for November 1, 2004 to determine how the case will proceed.

## 2. State court cases

***Laub v. Davis, et al.***, Court of Appeal, Third Appellate District (Sacramento)

Petitioners: The California Farm Bureau Federation and several individual farmers

Respondents: State of California; The Resources Agency, Secretary of Resources; CalEPA, CalEPA Secretary

Summary of Case: The Farm Bureau filed this case in State court after the Federal district court dismissed a California Environmental Quality Act (CEQA) claim that had been part of their original NEPA lawsuit (described above). Defendants won all issues in the trial court and the Farm Bureau appealed. The Farm Bureau alleges that the CALFED Programmatic EIS/EIR violates CEQA and seeks an injunction of all Program activities until the alleged CEQA violations are cured. This case has been coordinated in Sacramento Superior Court with *Regional Council of Rural Counties* (below).

Current Status: The State defendants won on all issues at trial. The case is now on appeal and the parties' briefing was completed on May 11, 2004. In June, The Nature Conservancy was permitted to file an amicus curiae brief supporting the Programmatic EIS/EIR. The Farm Bureau's response was filed on July 16, 2004.

***Regional Council of Rural Counties v. State, et al.***, Court of Appeal, Third Appellate District (Sacramento)

Petitioners: Regional Council of Rural Counties, Central Delta Water Agency, South Delta Water Agency, and individual farmers

Respondents: State of California; The Resources Agency, Secretary of Resources; CalEPA, CalEPA Secretary (plus real parties in interest: Department of Water Resources, DWR Director; Department of Fish and Game, DFG Director; Patrick Wright [as Director of the CALFED Bay-Delta Program]; and numerous Federal agencies and officers)

Summary of Case: The complaint alleges that the CALFED Programmatic EIS/EIR violates CEQA and that the Project would harm the Delta. They also contend that the ROD is illegal under several water law theories. This case was coordinated in Sacramento Superior Court with *Laub v. Davis* (above), and the two cases have been consolidated on appeal.

Current Status: The State defendants won on all issues at trial. The case is now on appeal and briefing was completed on May 11, 2004.

**B. *California Farm Bureau Federation v. Mike Chrisman, et al.*** Sacramento Superior Court

Petitioners: California Farm Bureau Federation

Respondents: The following State agencies were sued in addition to those directors and secretaries in their official capacities: Resources (Michael Chrisman); CalEPA (Terry Tamminen); CDFA (A.G. Kawamura); DWR (Lester Snow), DFG (Loris "Ryan" Broddrick); DHS (Sandra Shewry); and California Bay-Delta Authority (Patrick Wright)

Summary of Case: On April 16, 2004, the Farm Bureau filed this CEQA action challenging the adoption of a Final EIS/EIR covering operation of the Environmental Water Account (EWA) through 2007, the end of the first stage of implementation of the CALFED Program. The Farm Bureau alleges the EIS/EIR does not adequately address "agricultural resources" when analyzing impacts, alternatives, mitigation, and other issues regarding operations of the EWA.

Current Status: The Farm Bureau has agreed to, and the court has approved, an extension of time to prepare the administrative record until August 2004. The settlement meeting required by CEQA was held on May 27, 2004. A hearing date of December 10, 2004 has been set; and the parties will confer on briefing deadlines to meet this date.